COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF KENTUCKY POWER COMPANY D/B/A AMERICAN ELECTRIC POWER AND AEP COMMUNICATIONS LLC FOR AN ORDER AUTHORIZING: (1) THE TRANSFER OF FIBER OPTIC CABLE FROM KENTUCKY POWER COMPANY D/B/A AMERICAN ELECTRIC POWER TO AEP COMMUNICATIONS, LLC	) CASE NO. 97-309

ORDER

On July 7, 1997, Kentucky Power Company d/b/a American Electric Power ("Kentucky Power") and AEP Communications, LLC ("AEPC") filed a joint application requesting the Commission to approve: (1) the transfer from Kentucky Power to AEPC of a portion of a fiber optic cable; (2) a methodology for future transfer of assets to AEPC; and (3) procedures for reporting affiliate transactions between Kentucky Power and AEPC. In addition, the application requests the Commission to waive its authority to approve or, in the alternative, to approve contracts between Kentucky Power and AEPC for services and products to be provided by AEPC.

Kentucky Power is a utility engaged in the generation, transmission, and distribution of electricity to or for the public for compensation in the Commonwealth of Kentucky and is an electric utility as defined in KRS 278.010(3)(a). Kentucky Power is a wholly owned subsidiary of the American Electric Power Company, Inc., a registered holding company under the Public Utility Holding Company Act of 1935 ("PUHCA"). In accordance with PUHCA, a registered holding company may provide telecommunications services only through the creation of an exempt telecommunication company ("ETC"). Kentucky Power's parent has created a new wholly owned subsidiary, AEPC, which will provide telecommunications services as an ETC.

Kentucky Power and certain of its affiliated utilities own a 210 mile fiber optic cable which contains 20 fibers. The cable runs between Columbus, Ohio and Charleston, West Virginia and is attached to the utilities' electric transmission towers. Approximately seven miles of cable runs through Kentucky and is owned by Kentucky Power. Pursuant to PUHCA Section 34(b), Kentucky Power requests authority to lease to AEPC, for a term of 25 years, 10 unused fibers in the cable. As of April 30, 1997, Kentucky Power's net book value in the cable was $183,693. The terms of the lease are set forth in a Fiber Optic Agreement, attached as Exhibit B to the Application and amended by letter filed on October 24, 1997.

The lease agreement requires AEPC to pay to Kentucky Power the greater of the net book value of the existing fiber or its fair market value. The Commission finds that this provision is reasonable and consistent with the guidelines established for other electric utilities governing the transfer of assets from the regulated utility to an unregulated affiliate. The lease also establishes a framework for AEPC to lease additional fibers that may in the future be constructed by Kentucky Power. The application does not specify what, if any, future fiber optic lines may be constructed or why the construction will not be performed directly by AEPC. Under these circumstances, the Commission finds it prudent to limit its approval to only the lease of fibers in the existing fiber optic line described above. In the event that Kentucky Power deems it necessary and appropriate to construct additional fiber optic cables or any other facilities to be transferred or leased to AEPC, an application should be filed with the Commission prior to beginning construction. The purpose of the application will be to describe the proposed facilities, explain why it is necessary and appropriate for Kentucky Power to perform the construction, and describe the portion of the facilities to be operated and used exclusively by Kentucky Power.

To the extent that Kentucky Power makes a future transfer or lease of existing assets to AEPC, such transaction should also be priced at the greater of market or net book value. In the event that no market price exists, Kentucky Power proposes to use the average of two independent appraisals, with the net book value as a floor. This proposal is reasonable and will be accepted.

Pursuant to PUHCA Section 34(i), the applicants request the Commission to waive its authority over or, in the alternative, to approve a services agreement under which AEPC will provide telecommunications and related services to Kentucky Power. The Commission notes that it has not waived its authority over any similar agreement between a regulated utility and its unregulated affiliate, and no good cause has been presented here to grant such a waiver.

Turning to the merits of the Service Agreement, which is attached to the application as Exhibit C, all services to Kentucky Power are to be priced at AEPC's "standard market prices." The use of market prices for such transactions is required by Section 103 of the Telecommunications Act of 1996, providing that a prevailing market price exists for such transaction. Under federal rules implementing the

Telecommunications Act of 1996, a prevailing market price exists when over 50 percent of the sales by the unregulated affiliate are to third parties. In the absence of a prevailing market price, the transaction is to be priced at the lower of cost or market.

The Commission finds that while Kentucky Power's purchases from AEPC may be at the same prices AEPC charges nonaffiliates, this does not mean that Kentucky Power could not obtain the same goods or services from a nonaffiliate supplier at a lower price. Therefore, should Kentucky Power seek rate recovery of the cost of goods or services acquired from AEPC, evidence of prices from alternative suppliers must be presented to demonstrate the reasonableness of the affiliate transaction.

On the issue of reporting affiliate transactions, Kentucky Power proposes to file an annual report listing all transactions with AEPC and specifying the parties involved, assets transferred, services provided, and transaction prices. The Commission finds this proposal to be reasonable, except that the annual report should also specify for each transaction whether the price was at cost or market and, if market, include an explanation of how it was determined.

In addition, Kentucky Power originally proposed that any asset transfers in excess of $1 million per transaction be noticed to the Commission in advance. The transfer could take place 20 days later unless the Commission initiated an investigation within the 20 days. In response to a concern raised at the October 15, 1997 informal conference, Kentucky Power filed a revision on October 24, 1997, proposing that for the first three years notice will be given for any transaction in excess of $250,000. The Commission finds the $250,000 threshold to be reasonable but believes the notice period should be 30 days. This will afford the Commission adequate time to obtain supplemental information or clarification as necessary without substantially delaying the transfer process by opening a formal investigation.

IT IS THEREFORE ORDERED that:

1. The transfer and lease by Kentucky Power to AEPC of 10 strands of a fiber optic cable is approved.

2. The Fiber Optic Agreement, as amended, is approved except that Kentucky Power shall not construct any facilities to be transferred or leased to AEPC without prior construction approval.

3. The Service Agreement is approved as discussed in the findings above.

4. Kentucky Power shall file an annual report of transactions with AEPC, setting forth the information described above.

5. Kentucky Power shall file notice with the Commission prior to any transfer or lease of assets to AEPC when the market or book value of the transaction exceeds $250,000. In the event no investigation is initiated within 30 days after such notice, Kentucky Power is authorized to close the transaction.

Done at Frankfort, Kentucky, this 18th day of November, 1997.

PUBLIC SERVICE COMMISSION

B. J. Helton
Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPROVAL OF THE RESALE AGREEMENT NEGOTIATED BY BELLSOUTH TELECOMMUNICATIONS, INC. AND CHOICE TELEPHONE COMPANY, INC. PURSUANT TO SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996	)))))))	CASE NO. 97-438

ORDER

On October 24, 1997, BellSouth Telecommunications, Inc. ("BellSouth") and Choice Telephone Company, Inc. ("Choice") submitted to the Commission their negotiated agreement for resale of BellSouth services. The agreement was negotiated pursuant to the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. Sections 251 and 252. Section 252(e) of the 1996 Act requires the parties to an interconnection agreement adopted by negotiation to submit the agreement for approval to the Commission.

The Commission has reviewed the agreement and finds that no portion of the agreement discriminates against a telecommunications carrier not a party to the agreement. The Commission also finds that the implementation of this agreement is consistent with the public interest, convenience, and necessity.

Choice must comply with all relevant Commission mandates for serving in this Commonwealth including the submission of documents verifying the establishment of an escrow account or the posting of a bond to cover 6 percent of Choice's gross receipts from the provision of intrastate service for Universal Service Fund obligations.[1]

The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The negotiated agreement between BellSouth and Choice is approved.

2. Within 20 days of the date of this Order, Choice shall file documents demonstrating that an escrow account or bond has been established to pay its Universal Service Fund obligations.

3. Choice shall file a tariff for local service prior to providing local service giving 30-days' notice to the Commission and shall comply with all Commission regulations and orders as directed.

Done at Frankfort, Kentucky, this 18th day of November, 1997.

PUBLIC SERVICE COMMISSION

B. J. Helton

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director

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1 See Administrative Case No. 355, An Inquiry Into Local Competition, Universal Service, and the Non-Traffic Sensitive Access Rate, Order dated September 26, 1996 at 51 and 54.